

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

MIGUEL MENDOZA,

Plaintiff,

-against-

9:09-CV-466 (LEK/RFT)

DEBORAH SCHULT, Warden, FCI Ray  
Brook; D. MARINI, M.D., Clinical  
Director, FCI Ray Brook; LIBERTY, P.A.,  
Physician's Assistant, FCI Ray Brook;  
UNITED STATES,

Defendants.

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**DECISION and ORDER**

This matter comes before the Court following a Report-Recommendation filed on September 14, 2011, by the Honorable Randolph F. Treece, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York. Report-Rec. (Dkt. No. 78). After fourteen days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by Miguel Mendoza, which were filed September 28, 2011. Objections (Dkt. No. 78).

. “A [district] judge . . . may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b). This Court is to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” Id. Where, however, an objecting “party makes only conclusory or general objections, or simply reiterates his original arguments, the Court reviews the Report and Recommendation only for clear error.” Farid v. Bouey, 554 F. Supp. 2d 301, 307

(N.D.N.Y. 2008) (quoting McAllan v. Von Essen, 517 F. Supp. 2d 672, 679 (S.D.N.Y. 2007)) (citations and quotations omitted); see also Brown v. Peters, No. 95-CV-1641, 1997 WL 599355, at \*2-3 (N.D.N.Y. Sept. 22, 1997).

The Court has considered the Objections, has undertaken a *de novo* review of the record, and has determined that the Report-Recommendation should be approved for the reasons stated therein. Plaintiff objects to Judge Treece's dismissal of his Federal Tort Claims Act ("FTCA") claims on the grounds that he has failed to establish that the Defendants breached their duty of care towards him. Obj. at 3. More specifically, he claims that "Defendant Liberty breached his duty with his failure to determine the kind of discomfort" afflicting Plaintiff, and that, as a result, Defendant Liberty failed to provide him with proper medical treatment. Id. Having reviewed this objection *de novo*, the Court finds that Judge Treece correctly determined that summary judgment for Defendants was warranted on this issue, inasmuch as Defendant Liberty determined that Plaintiff appeared to be suffering from a panic attack, and the evidence before the Court indicated that Defendant Liberty's assessment of Plaintiff's condition was accurate. Report-Rec. at 13.

Accordingly, it is hereby:

**ORDERED**, that the Report-Recommendation (Dkt. No. 78) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

**ORDERED**, that Defendants' Motion for summary judgment (Dkt. No. 53) is **GRANTED**; and it is further

**ORDERED**, that Plaintiff's Second Amended Complaint (Dkt. No. 11) is **DISMISSED**; and it is further

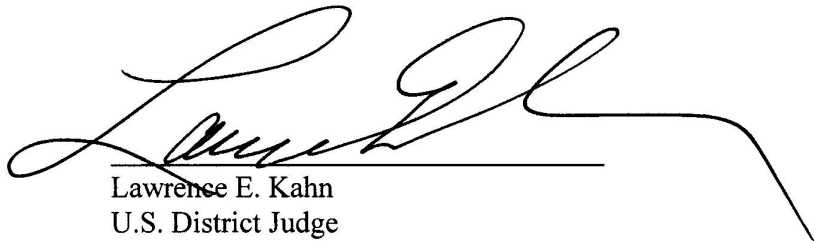
**ORDERED**, that the Plaintiff's motion to appoint counsel is **DENIED** as moot, and it is

further

**ORDERED**, that the Clerk serve a copy of this Order on all parties.

**IT IS SO ORDERED.**

DATED: September 30, 2011  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge